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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 GARY M. LIBERTY,

15 Defendant.

CASE NO. 02cr2952 JM

ORDER DENYING MOTION TO  
PLEAD GUILTY TO VIOLATION  
OF SUPERVISED RELEASE AND  
FOR IMPOSITION OF SENTENCE  
IN ABSENTIA


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17 On or about September 8, 2006 Defendant filed a motion to immediately plead  
18 guilty to violation of the terms of his supervised release and to request the imposition  
19 of a sentence in absentia to run concurrently with the three year sentence Defendant is  
20 currently serving in the Arizona Department of Corrections. In the present case, on or  
21 about August 25, 2003 Defendant plead guilty to transportation of illegal immigrants  
22 in violation of 8 U.S.C. §1323(a)(1)(A). Defendant was sentenced to twelve months  
23 and one day in custody and two years supervised release.

24 The court denies Defendant's motion to plead guilty to a supervised release  
25 violation. While a detainer has been lodged against Petitioner, he is not presently in  
26 custody on the warrant for a supervised release violation. Rather, Defendant is in  
27 custody pursuant to a sentence imposed in a separate case. Consequently, Rule 32.1  
28 does not apply to Defendant. Further, Defendant cannot demonstrate any prejudice if

1 a revocation hearing is conducted after he completes the sentence in the Arizona case  
2 because the delay in the revocation hearing is due solely to his own conduct. See  
3 United States v. Wickham, 618 F.2d 1307 (9<sup>th</sup> Cir. 1979).

4 **IT IS SO ORDERED.**

5 DATED: September 20, 2006

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8 Hon. Jeffrey T. Miller  
United States District Judge

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cc: All parties